IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

:::

JUDGMENT

Ishwar Das.
vs.
Nand Kishore.

S.B.CIVIL SECOND APPEAL NO.375/2006 UNDER SECTION 100 CPC AGAINST THE JUDGMENT AND DECREE DATED 23.8.2006 PASSED BY SHRI RAJ KUMAR BHAGAT, ADDITIONAL DISTRICT JUDGE NO.1, JODHPUR IN CIVIL APPEAL DECREE NO.44/2004.

DATE OF JUDGMENT ::: 4.5.2007

PRESENT

HON'BLE MR. PRAKASH TATIA, J.

Mr.D Mulchandani, for the appellant.
Mr.RK Thanvi, for the respondents.

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BY THE COURT:

Heard learned counsel for the parties.

The suit of the plaintiff/respondent was decreed by the trial court for eviction of the defendant/

appellant/tenant vide judgment and decree dated 17.7.2003. Ultimately, the appellate court upheld the finding of the trial court on the question of personal bonafide necessity for the suit premises in favour of the plaintiff.

Learned counsel for the appellant/tenant vehemently submitted that both the courts below misread the material evidence of the plaintiff himself as well as have ignored the fact that the plaintiff pleaded that he is living in one room only whereas it is admitted case that the house where the plaintiff is residing is having 12 rooms and the plaintiff has three rooms. It is also submitted that the defendant's witnesses proved the fact that the plaintiff is living comfortably in his house, therefore, the two courts below committed serious error of law in decreeing the plaintiff's suit.

I considered the submissions of learned counsel for the parties and perused the two judgments of the courts below as well as the record.

It is not disputed by the defendant/appellant that the plaintiff at present is residing in his ancestral house situated in city area of Jodhpur and three brothers and their families are living in this house.

The plaintiff's mother is also residing there. The plaintiff also pleaded that because of the common accommodations, there is quarrel between the family members also. All these facts have been cosidered by the courts below and thereafter the two courts below concurrently decided the issue of personal bonafide necessity in favour of the plaintiff.

In view of the above, I do not find any substantial question of law involved in this appeal as none of the portion of evidence is ignored and misread by the two courts below in view of the admitted facts of the case even by the defendant that the plaintiff is living in his ancestral house along with his families, then the need of the plaintiff cannot be doubted.

In view of the above discussion, this second appeal deserves to be dismissed.

At this juncture, learned counsel for the appellant prayed that sufficient time may be given to the appellant to vacate the suit premises.

Learned counsel for the respondent has serious objection to the grant of time to the appellant.

I considered this prayer of learned counsel for the appellant and looking to the facts of the case,

this Court is of the view that the appellant be granted time upto 31.5.2008 to vacate the suit premises.

Therefore, it is ordered that in case, the appellant furnishes a written undertaking before the trial court within a period of two months from today that he shall hand over the vacant possession to the landlord by or before 31.5.2008 and shall not part with the possession or sublet the suit premises during this period and shall pay all the arrears of rent and decreetal amount, if due, and shall also pay the rent upto 31.5.2008 in advance within a period of two months from today before the trial court or directly to the landlord, the decree under challenge shall not be executed till 1.6.2008.

In case of non-compliance of the order or default in payment of amount mentioned above, the decree shall become executable forthwith.

With the aforesaid concession, this appeal is dismissed.

(PRAKASH TATIA), J.

S.Phophaliya